

TO: Files

CC: San Diego Audit Committee

FROM: Willkie Farr & Gallagher LLP

RE: Interview of Leslie Girard on May 11, 2006

DATED: May 19, 2006

On Thursday, May 11, 2006, Benito Romano interviewed Leslie Girard in Willkie Farr & Gallagher LLP's ("Willkie") capacity as counsel to the Audit Committee. Mr. Girard was represented by counsel, Robert Friese of Shartsis Friese LLP. Also in attendance were Donielle Evans of KPMG, and Sharon Blaskey and Heath Rosenthal of Willkie. The interview took place in a conference room on the third floor of the San Diego City Administration Building and lasted approximately three hours.

The following memorandum reflects my thoughts, impressions and opinions regarding our meeting with Mr. Girard, and constitutes protected work product. It is not, nor is it intended to be, a substantially verbatim record of the interview.

Warnings

At the outset of the interview, Mr. Romano explained to Mr. Girard that Willkie represents the Audit Committee created by the City Council. Mr. Romano also stated that although the material discussed during the interview would be treated as privileged, covered either by the attorney-client privilege or the work product doctrine, in the likely event that Willkie issued a report, the privilege would be lost. In addition, the City could waive the privilege even if no report was written. Mr. Romano further explained that because the Audit Committee is cooperating with other investigations, we may be sharing information we learned with the U.S. Attorney's Office, the SEC and the City's outside auditor, KPMG, and therefore Mr. Girard should be as accurate and truthful as possible. Mr. Romano also asked that the contents of the interview be kept confidential, and emphasized that Mr. Girard could seek clarification of any question at any time.

Background

Mr. Girard stated that he received his law degree from Georgetown University and began working for the City Attorney's Office in December 1981, spending the majority of his time as a litigator. In 1996, he was appointed as the Assistant City Attorney for Special Projects ("ACASP"). In that role, which he called a "minister without portfolio," Mr. Girard received a mix of transactional and litigation assignments from the City Attorney, and he worked on these projects without the help of subordinates.

Mr. Girard noted that he had been previously interviewed by the SEC, the California District Attorney, the US Attorney's Office, and Vinson & Elkins ("V&E"). He read his notes from those interviews in preparation for the May 11, 2006 Willkie interview.

Role of the City Attorney's Office in Council Closed Sessions

Mr. Girard said that shortly before he was appointed to be the ACASP in 1996, he began regularly attending closed council sessions. During closed sessions, Mr. Girard kept notes for the City Attorney's office at the direction of Assistant City Attorney John Kaheny who had previously done that task. Those notes would include who was in attendance, the results of votes that took place, and Mr. Girard's sign-off. Mr. Girard stated that he took notes at closed sessions whenever he attended those sessions during his tenure in the City Attorney's office.

Mr. Girard also stated that when he began sitting in on closed sessions, the City Clerk took the official office notes pursuant to the Brown Act. Those notes were very "bare bone" including who was in attendance, what motions were made, and any decisions. Mr. Romano asked if the purpose of having him take notes at closed session was to ensure the City's compliance with the Brown Act. Mr. Girard responded that he assumed that the book in which he took notes was a means for the City Attorney's office to ensure compliance with the Brown Act even though the Brown Act does not require the City to keep notes.

Mr. Girard then explained that around 1998 or 1999, there were a number of information leaks out of closed session believed to have originated from the City Clerk. As a result, the Council stopped the practice of having the City Clerk take notes at closed session and the leaks ceased, which Mr. Girard said could have been a coincidence. From that point on, a representative from the City Attorney's office took the official closed session notes. Usually Mr. Girard took the notes, unless he had his own project to report to the Council.

Mr. Romano asked if City Attorney Casey Gwinn and Assistant City Attorney Richard Duvernay also attended the closed sessions. Mr. Girard responded that Mr. Gwinn attended most of the closed sessions, even in the 1990s when Mr. Girard was present, and that Mr. Duvernay attended most of the closed sessions. Mr. Girard also added that he, Mr. Gwinn and Mr. Duvernay would speak up on a point of law or fact if a question came up on which they had knowledge, even if it was not their own specific projects that were being discussed.

Mr. Romano asked Mr. Girard to explain how material was assembled in advance of a closed session. Mr. Girard stated that if the topic of the closed session was a specific litigation, the attorney in the City Attorney's office handling that litigation would prepare a memorandum. The City Attorney's office did not have to prepare a memorandum for every topic that came before closed session, including labor negotiations and real property transactions. Materials prepared by the City Attorney's office were sent to the City Manager's office at the end of the week prior to the scheduled session and would indicate that they were confidential and protected by the attorney-client privilege. Mr. Romano asked if the materials not coming out of the City Attorney's office were marked as confidential, and Mr. Girard stated that he did not know. Mr. Girard went on to explain that the City Manager would then put these materials, which were printed on pink paper, into binders and distribute the binders to the Council the Thursday or Friday before the closed session. Councilmembers were to destroy the materials or return the materials after the session to be destroyed. Later in the interview, Mr. Romano asked

Mr. Girard if the Councilmembers had sufficient time to review the closed session materials. Mr. Girard responded that, for the most part, Councilmembers had enough time to review the materials. Mr. Romano then stated that he had heard complaints that the materials were often voluminous and the Councilmember lacked training in reading them. Mr. Girard responded that there were occasions where complicated issues came up at the last minute, and he would offer to meet with the Councilmember individually to discuss them.

Mr. Romano asked Mr. Girard how the closed session materials were maintained in the City Attorney's office. Mr. Girard said that the materials used to be contained in locked cabinets organized alphabetically and by date. All notes, official and unofficial, were also kept in this manner. Originally, the closed session minutes were kept separate from the materials handed out at the closed session. Then, Mr. Girard decided to keep the materials with the minutes. Later, a system was implemented whereby minutes were kept alphabetically and chronologically so that they could be cross-referenced with the corresponding binder of materials, which were maintained separately. Once City Attorney Michael Aguirre took office, he gathered up the minutes and the binders and locked them up in a safe in his office. As a result, Mr. Girard no longer knows how the minutes and materials from closed session are organized.

Mr. Girard stated that on Monday mornings, all civil attorneys in the City Attorney's office would get together and talk about matters on the open council session agenda, but not the closed session agenda. There were not regular briefings on closed session matters. However, there would be times the City Attorney would receive a briefing if a particularly significant issue was going to be raised in closed session.

History of the City Attorney's Office

Mr. Romano noted that Mr. Gwinn has been described by some as being a different type of City Attorney than John Witt. He also noted that people have said that Mr. Girard was the "go to" person in the City Attorney's office. Mr. Friese said that Mr. Girard received more publicity because he was perceived as the "best and brightest in the office" and that he was the visual face of the City Attorney's office. Mr. Girard stated that there were a lot of issues he did not handle or want to handle, such as labor negotiations. Mr. Girard did state, however, that, although he became one, he never considered himself to be an expert in disclosure.

Mr. Girard explained that the City Attorney's office has approximately 150 attorneys in the criminal and civil divisions. According to Mr. Girard, Mr. Witt was the City Attorney for 26 years and had a very good staff. Mr. Gwinn worked under City Attorney Witt as an attorney in the criminal division and Mr. Girard worked in the civil division. Mr. Gwinn worked in the criminal division of the City Attorney's office until he became the City Attorney. He was a prosecutor, and his passion was domestic violence prosecution. Mr. Gwinn ran for District Attorney in 1994 and ran unopposed for City Attorney in 1996. Mr. Gwinn had no municipal law training when he took office, and no one perceived him as having such expertise.

While Mr. Gwinn ran for City Attorney (in an unopposed race), Mr. Witt made him an Assistant City Attorney in the civil department to elevate his visibility. At the same time, Mr. Girard gave Mr. Gwinn some training in municipal law so that Mr. Gwinn could be looked

upon as knowledgeable in that field. This education continued from the time when Mr. Gwinn won the election in June 1996 until he took office in December 1996 and even after he took office.

Mr. Girard said that when Mr. Gwinn took office, a lot of attorneys who had worked under Mr. Witt left the City Attorney's office. Mr. Gwinn asked Mr. Girard to join his senior staff, and at the time Mr. Girard had the most seniority and broadest experience in the City Attorney's office. Mr. Duvernay had left the City Attorney's office for private practice, but returned at the request of Mr. Gwinn.

Mr. Girard also stated that Mr. Gwinn trusted him a lot, but they did not see "eye-to-eye" on every issue. For example, in 1997 or 1998, Mr. Girard opposed an attorney from the City Attorney's office serving as counsel to the retirement board because he did not believe that the Charter permitted an attorney from the City Attorney's office to wear both hats. Mr. Gwinn, however, felt it was appropriate to accommodate the desire of retirement board and he transferred one of the lawyers on the City's staff to SDCERS. That lawyer remained Deputy City Attorney, but worked out of the retirement board's offices. Mr. Girard recalled that the Deputy City Attorney took a secretary, and eventually another attorney, from the City Attorney's office. Eventually the Deputy City Attorney resigned from City Attorney's office and became an attorney solely for the retirement board.

The Ballpark Project and the Bryan Cave Letter

Mr. Romano showed Mr. Girard Exhibit 1, an October 29, 2001 letter from the Bryan Cave law firm to Mr. Girard (the "Disclosure Letter") which Mr. Girard forwarded to Mayor Dick Murphy and the Council on November 6, 2001 for discussion at closed session. Mr. Girard said that the Disclosure Letter related to the building and financing of the Padres' new ballpark (the "Ballpark") and was a project in which he was heavily involved. His role was that of a negotiator and a lawyer. Mr. Romano asked if Mr. Girard created any of the financial documents that related to the Ballpark's refinancing, and Mr. Girard said that he did not. Mr. Girard emphasized that he was not bond counsel, disclosure counsel, or a reviewer of the City's finances.

Mr. Romano inquired about the legal documents that were created to carry out the Ballpark project. Mr. Girard stated that about 20 agreements were entered into between the City, the Padres, and other entities. The creation of these various agreements was a collaborative effort, but the principal draftsmen were Mr. Girard, Bruce Herring (Deputy City Manager), outside counsel/negotiators Paul Jacobs and Steven Lebowitz (Mr. Girard's current partner), Dan Barrett (a sports expert), the Center City Development Corporation, and AG Edwards (a financial advisor). (Names spelled phonetically.) Mr. Romano asked Mr. Girard whether he created any of the first drafts of these documents. Mr. Girard responded that some of the first drafts of these contracts were created by the City and others were created by the Padres. Mr. Girard believes that he began the drafting of the Memorandum of Understanding which got shipped back and forth between the City and the Padres.

Mr. Girard explained that around the time the Disclosure Letter was written, there had already been six or seven lawsuits against the City relating to the Ballpark and a U.S. Attorney's Office investigation into the allegations that Councilmember Valerie Stallings

accepted gifts from the Padres' owner John Moores, which resulted in a guilty plea from Ms. Stallings. In addition, Bruce Henderson, an opponent of the Ballpark project, sent a letter to the City threatening to report it for various violations of securities laws, and Mr. Girard conveyed this to the City's bond disclosure counsel, Paul Webber of Orrick. The Disclosure Letter was written out of concern that more litigation might hinder the issuance of the bonds being used to finance the new Ballpark. According to Mr. Girard, Mr. Webber "wanted to ensure that there was nothing unknown that would affect the issuance of the bonds." It took Mr. Girard some time to understand that California Civil Code Section 1090 would apply to this situation, and he asked for advice from the Luce Forward law firm and Mr. Webber on that issue.

Mr. Romano asked how the Disclosure Letter was created. Mr. Girard stated that Mr. Webber suggested the City get disclosure counsel to talk to the Council and suggested Gerald Boltz of the Bryan Cave law firm. Mr. Girard did not know Mr. Boltz, but the City ended up seeking the advice of Bryan Cave. Bryan Cave prepared the Disclosure Letter to be provided to the Council in closed session. Mr. Romano asked if Mr. Girard believed that it was legitimate to discuss the Disclosure Letter in closed, as opposed to open session. Mr. Girard thought that closed session was the appropriate forum to discuss the Disclosure Letter because of the risk of litigation that would hinder the issuance of the bonds and the "ferocity" of the opponents to the Ballpark project. Additionally, he said the Council could have chosen to move this discussion to open session. Mr. Girard put together a packet that he sent to the City Manager's office to be distributed prior to the closed session that included the Disclosure Letter. Mr. Girard asked that Mr. Boltz, Matthew Anhut, also of Bryan Cave, and Mr. Webber attend the closed session.

Mr. Romano asked who made the presentation at the closed session. Mr. Girard stated that during the closed session in which the Disclosure Letter was discussed, he merely introduced the presentation. He said that Mr. Boltz gave the presentation, which tracked the Disclosure Letter very closely. Mr. Girard had a vague recollection that Councilmembers asked questions during the closed session, and Mr. Webber made some comments, perhaps in response to the Council's questions. Mr. Anhut was in attendance but did not speak at the meeting. Aside from this closed session, Mr. Girard stated that there were long open sessions regarding the issue and he met individually with the Councilmembers about the Ballpark. Mr. Girard said that both the City Attorney and the City Manager provided the Councilmembers with information about the Ballpark.

Impression of Mr. Webber and the 2004 Voluntary Disclosure

Mr. Romano asked Mr. Girard how he met Mr. Webber. Mr. Girard stated that he got to know him when Mr. Webber was the City's bond counsel on the convention center project in the mid 1990s. Mr. Girard became more acquainted with Mr. Webber during the stadium expansion and the Ballpark projects. Mr. Romano asked Mr. Girard about his impressions of Mr. Webber. Mr. Girard said Mr. Webber is a very good lawyer with a rather demanding personality. He thought that Mr. Webber had reacted rather harshly under stressful situations, especially when he was dealing with people whom he did not consider to be his peers. However, Mr. Girard had a good relationship with Mr. Webber, and Mr. Webber never talked down to him. Mr. Romano asked if the City Attorney's office had an attorney assigned to work on bond issuances. Mr. Girard said that Kelly Salt was the lawyer from the City Attorney's office

assigned to work with bond counsel. Mr. Girard said that he was never assigned to work on bond issues.

Mr. Girard said he believed his role in the fall of 2003 was to get the City staff and Mr. Webber together to execute proper disclosure. Mr. Romano asked if Mr. Girard thought that people were withholding information from Mr. Webber because of Mr. Webber's personality. Mr. Girard responded that the resistance to cooperate with Mr. Webber did not result from personality conflicts between him and the City staff. Rather, Mr. Girard thought that people in the City staff, particularly Mary Vattimo and Terri Webster, were withholding information from Mr. Webber because they were irritated with his demands that were driven by Diann Shipione's allegations, allegations they did not take seriously because they thought Ms. Shipione was untruthful and not credible. Mr. Girard stated that the City staff believed that Mr. Webber wanted to disclose more than was necessary, but Mr. Webber believed Ms. Shipione's allegations to be legitimate.

Mr. Romano showed Mr. Girard Exhibit 2, a September 27, 2003 e-mail from Ms. Vattimo to Mr. Girard and asked whether Ms. Vattimo's relationship with Mr. Webber had soured by that point. Mr. Girard explained that their relationship was constantly up and down because their personalities simply "did not mesh." He also stated that Ms. Vattimo's comment in her September 27 e-mail in which she stated to him that "we will have to be convinced of the need to blaze a trail regarding pension disclosure," reflected Ms. Vattimo's belief that the disclosure was satisfactory and Mr. Webber was stepping outside of his role as counsel by opining on policy questions.

Mr. Romano asked if "materiality" of the errors was being discussed in September 2003. Mr. Girard stated that the initial problem was an erroneous reference in the pension footnote. As Mr. Webber began his investigation into the pension footnote, it became apparent that there were other errors in the CAFR. Thus, there were issues with respect to both the materiality of the errors in the pension footnote and the materiality of the CAFR errors. Mr. Webber thought that the errors in the pension footnote were material, and Mr. Girard agreed that the sheer number of errors in the CAFR raised questions as to materiality.

Mr. Romano showed Mr. Girard Exhibit 3, a September 26, 2003 chain of e-mails between Ms. Vattimo and Mr. Webber. Mr. Romano asked Mr. Girard if he had discussed with Ms. Vattimo what she thought proper disclosure was, and Mr. Girard stated that he was not sure if such a conversation took place. He said the tension between Ms. Vattimo and Mr. Webber, as evidenced in these e-mails, resulted from Ms. Vattimo's belief that Mr. Webber was disclosing too much information because of Ms. Shipione's allegations.

Mr. Romano then asked if Mr. Girard had served as Mr. Webber's point of contact on the voluntary disclosure issues. Mr. Girard explained that Mr. Webber called Mr. Girard on the Sunday of Labor Day 2003. Mr. Girard believed that the last time he had spoken to Mr. Webber prior to that phone call was in the spring of 2003 on a conference call involving litigation over the Ballpark bonds. He did not recall that they had much contact again until Labor Day of that year. Mr. Romano then asked why Mr. Webber had called him. Mr. Girard responded that Mr. Webber told him that some people in the City staff were not taking the disclosures as seriously as they should be, and he thought that Mr. Girard could get them to pay attention to the disclosure issues. Mr. Romano asked if Mr. Girard was referring to the Ballpark

refunding. Mr. Girard stated that he was not. He noted that the City had to wait until Mr. Webber could get a clean opinion and recalled him working on Water and Wastewater.

Mr. Romano showed Mr. Girard a chain of e-mails (Exhibit 4) ending with an e-mail from Ms. Webster to Mr. Girard on November 18, 2003. Mr. Romano asked Mr. Girard why Ms. Webster was concerned with excessive disclosure. Mr. Girard explained that Ms. Webster and Mr. Webber disagreed about what constituted proper disclosure because Ms. Webster was more concerned with Generally Accepted Accounting Principals whereas Mr. Webber concentrated more on the legal issues. Mr. Romano noted that Ms. Webster seemed to be complaining about the detail in Mr. Webber's disclosure. Mr. Girard responded that Mr. Webber tended to write a lot and this e-mail may be referring to Ms. Webster's frustration with Mr. Webber's detailed paragraph about the *Gleason* litigation. Mr. Romano asked if Luce Forward drafted the *Gleason* disclosure language. Mr. Girard said he had a vague recollection that Luce Forward provided draft language on the *Gleason* disclosure because they were litigating the case on behalf of the City.

Mr. Romano asked if Mr. Girard agreed with what Mr. Webber suggested was the proper disclosure. Mr. Girard said that he wanted to disclose whatever Mr. Webber thought was appropriate. Mr. Romano asked if it had been suggested to Mr. Girard to replace Mr. Webber. Mr. Girard said that such a suggestion had been made, though he did not recall by whom. Mr. Girard also said nobody ever suggested getting a different lawyer at Orrick Herrington to review the City's disclosures. Mr. Girard said that he never thought of replacing Mr. Webber because he believed him and thought that replacing him would send a very negative message.

Mr. Romano showed Mr. Girard Exhibit 5, a January 13, 2004 e-mail from Lakshmi Kommi to Mr. Girard, Patricia Frazier (Deputy City Manager), and Ms. Vattimo discussing the disclosure of MP-2. Ms. Kommi wrote that Ms. Lexin had been "very concerned about the legal implications from portraying 'negotiated increase in pension benefits by the City . . . ' as the reason for the existence of the 2002 Agreement" and referred to Mr. Webber's e-mail in which he stated that he refused to accept Ms. Lexin's changes. Mr. Girard believed that Mr. Webber met with a number of people to become educated about the pension system, including Ms. Lexin. According to Mr. Girard, Ms. Lexin had explained her view to Mr. Webber about how MP-2 arose and was executed. However, after reading SDCERS Board minutes, Mr. Webber concluded that there had been a complete discrepancy with what Ms. Lexin had told him. As a result, Mr. Webber did not trust Ms. Lexin because she either lacked a good recollection or had lied about MP-2. Mr. Romano said it looked as if Ms. Kommi had asked Mr. Girard for legal advice in response to the disagreement between Ms. Lexin and Mr. Webber, but Mr. Girard stated that he did not think she had asked him to take any kind of action.

Mr. Romano showed Mr. Girard Exhibit 6, a January 26, 2004 e-mail from Ms. Vattimo to Daniel Deaton (an associate at Orrick Herrington) and Lakshmi Kommi, copying Mr. Webber, Mr. Girard and Ms. Webster, in which Ms. Vattimo responded to a chain of e-mails discussing disclosure related to a case Mr. Webber had read about in the Union-Tribune. Mr. Romano noted that Ms. Vattimo defended herself and asked if there had been an accusation that she had been hiding information from Mr. Webber. Mr. Girard explained that there had been a panicked e-mail from Mr. Webber stating that the City was withholding information about that case, and, subsequently, Orrick Herrington learned that the case was not relevant to the City's

disclosure. He noted that, by that time, the working relationship between Ms. Vattimo and Mr. Webber was "frayed."

Mr. Romano then showed Mr. Girard Exhibit 7, a February 3, 2004 e-mail from Mr. Webber to Mr. Girard, in which Mr. Webber wrote that he did not want to talk to Ms. Frazier or Mr. Ryan without Mr. Girard being present. Mr. Girard explained his belief that Mr. Webber learned of Moody's action from the newspaper and when he read the memorandum describing the action he took issue with how it was phrased. Mr. Girard recalled stepping down from the Council dais and calling Mr. Webber to talk about this, but he did not remember what happened.

Mr. Girard stated that Mr. Webber had expressed a lack of trust (only) in Ms. Lexin, but Mr. Webber did express a lack of cooperation from others in the City staff. At that time, Mr. Girard had no opinion as to whether the City staff was being dishonest. He said he had no reason not to believe them because he had worked with them for such a long period of time. Mr. Girard stated that his purpose was not to make Ms. Vattimo, Ms. Webster or Mr. Webber happy. Rather, he said he acted as a mediator, and his primary goal was to help the City accomplish its disclosure.

Mr. Romano asked whether Mr. Girard reported to the Mayor or Council that Mr. Webber was frustrated with some of the City Staff. Mr. Girard stated that he periodically reported disclosure issues to Mr. Gwinn, and that the City Attorney's office briefed the Mayor and Council on the status of disclosure. Mr. Girard stated that he might have told Mr. Gwinn that Mr. Webber was upset with the City Staff, but he did not report that fact to the Mayor or Council. Mr. Gwinn was interested, but because the area of disclosure was way out of his area of expertise, he trusted Mr. Girard to handle the situation.

Mr. Romano asked when Mr. Girard told the Mayor and the Council that there was a problem with the City's disclosures. Mr. Girard said that he reported to the Council in a closed session in around September or October of 2003 that there were errors in the CAFR and that the City was looking at the pension disclosure and errors. He stated that Mr. Ryan characterized the errors at that meeting as "typos," not as a means of downplaying the situation, but rather to defend the auditing department. He believed Mr. Ryan did not appreciate the number of errors in the CAFRS yet. Mr. Romano asked whether Mr. Ryan knew at the time that Mr. Webber had a very different view of the errors. Mr. Girard responded that he was unsure if Mr. Webber had come to a conclusion about the errors at that time and noted that at that time Mr. Girard said did not feel qualified himself to form his own conclusions and was relying upon Mr. Webber's expertise.

Mr. Girard said that at a closed session at the end of 2003 that the Council was told of the errors in more detail. He said the Council was surprised because of the prior closed session. Some of the Councilmembers were upset, and one stated "How come you stated earlier on these were just typos?" In early 2004, Mr. Girard said he met with the Councilmembers and Mayor Dick Murphy individually to discuss the voluntary disclosures. He explained why the voluntary disclosures needed to be done and the accompanying implications. Mr. Girard said he recalled there were a lot of errors in the CAFR, making the errors material. He stated that he did not conduct these meetings alone, but he could not recall who was with him. He did not think it was Mr. Webber or Paul Maco. Mr. Romano asked how the Councilmembers reacted. Mr.

Girard stated that the Councilmembers were disappointed, but accepted the fact that they had to file a voluntary disclosure.

Mr. Girard said that Paul Maco provided the City with advice on the different vehicles that could be used to make the voluntary disclosure, but Mr. Maco made it clear that he was not going to give substantive disclosure advice. Mr. Maco had suggested including using a bond offering to make the proper disclosures, making a voluntary disclosure, submitting a revised CAFR or waiting to properly disclose in the CAFR in the spring of 2004. About mid-fall, Mr. Webber said that the voluntary disclosure would be best.

Mr. Romano noted that the interview memorandum reflecting Mr. Girard's interview with Vinson & Elkins stated that Mr. Girard could not answer questions about who was legally liable for the disclosure errors because Mr. Aguirre's reports presented a conflict. Mr. Girard responded that although he is no longer working for Mr. Aguirre, his wife currently works for him. Mr. Romano reminded Mr. Girard that his opinion is not evidence. Mr. Girard said that there were a lot of people who knew "a lot more about the facts" than he did, so he tried to keep an open mind. Mr. Girard stated that he had no reason to believe that anyone in the City's staff had acted criminally with regard to disclosure because he had worked with these people for many years and thought they were trustworthy. He said this was based on what he knew at the time and what he knows today. Mr. Girard also said that he felt there was a lot of sloppiness, both from the outside auditors and the City staff.

Mr. Romano asked how people responded to Ms. Shipione. Mr. Girard stated that he thought the City Staff had been overly dismissive of Ms. Shipione's allegations because of her personality and had been unwilling to listen with an open mind to her allegations.

The Blue Ribbon Committee and The Pension Reform Committee

Mr. Romano asked Mr. Girard if the City Attorney's office was involved with the Blue Ribbon Committee ("BRC"). Mr. Girard stated that either Stewart Swett (phonetic) or Mr. Duvernay of the City Attorney's Office had been involved with the BRC, but he did not know of its existence until the fall of 2003. He did not recall being at a Rules Committee meeting or any Council meetings in which the BRC report was presented, especially since his efforts had been concentrated on the Ballpark offering that occurred around the same time. Mr. Girard did not remember attending the Rules Committee meeting in which SDCERS's response to the BRC was presented. Mr. Girard said that Mr. Duvernay, not Mr. Gwinn, usually attended the Rules Committee meetings. Mr. Romano asked whether Ms. Webster ever talked to Mr. Girard about her work on the BRC, and Mr. Girard stated that she did not.

Mr. Romano asked Mr. Girard if he recalled that, given the *Gleason* litigation, he was concerned about the City Manager's response to the BRC report. Mr. Girard answered that the lawyers retained by the City in *Gleason* thought the City had a positive prospect for success (a position that later changed) and therefore there was concern that what the Manager might say would compromise the City's position. Mr. Romano then asked whether Mr. Girard recalled going to the Mayor's or the Manager's Office to advise them that it would be harmful to publish their work during the *Gleason* litigation. Mr. Girard said that he may have talked to someone about such a risk. He explained that he wanted a report about the *Gleason* litigation presented to the Council "first," and he had had a vague recollection that this is what occurred. (Mr. Girard

did not fully explain what he meant by this, but when Mr. Romano asked him if he told anyone in the Manager's office not to respond to SDCERS, he stated that he did not remember doing so.) Luce Forward did issue one or more reports, but Mr. Girard could not recall when. He also stated that Chris Morris was in charge of the *Gleason* litigation and he had little to do with it, so he could not recall exactly what occurred. Mr. Girard also noted that the BRC and SDCERS reports were all about the actuarial funding percentage, whereas the *Gleason* case dealt with the language of the Charter. Thus, he believed the City could still have won the *Gleason* litigation even if the actuary had said that the City was underfunding the pension. However, he was not sure if he would have recognized that back then.

Mr. Romano asked Mr. Girard if he had told the members of the Pension Reform Committee ("PRC") to delay issuing their report. Mr. Girard recalled that he talked to the chair of the PRC and told him to be very careful about what was being said and by whom. He thought this disclaimer occurred because of the disclosure problems that occurred at the time, not as a result of concerns about compromising the City's position in *Gleason*. It may have been Mr. Girard, Mr. Morris or someone else who advised the PRC to hold back on issuing the report. Mr. Girard could not recall that anyone pushed back or raised an alarm that the PRC report needed to be issued soon. Mr. Romano then asked Mr. Girard if he recalled any conversations with anyone at City Hall regarding the wisdom of creating the PRC, and Mr. Girard stated that he did not. Mr. Girard explained that after Mr. Webber called him on Labor Day 2003, he became concerned about what City representatives had been saying, and he constantly advised the Mayor's office and staff not to say anything. Mr. Romano reminded Mr. Girard that the *Gleason* action was filed in January 2003, but Mr. Girard said that if it occurred prior to Labor Day 2003, he did not recall it. He was unsure if Mr. Morris recalled that either.

MP-1 and MP-2

Mr. Girard stated that he did not know what MP-1 was until years after it had been created. Mr. Girard recalled being in a closed session during labor negotiations in 2002 in which Ms. Lexin made a presentation involving a conversation about a trigger, but he did not understand what was being discussed.

During the interview, Mr. Romano asked Mr. Girard whether he recalled a Council meeting where Ms. Shipione appeared and made a statement about MP-2. Mr. Girard stated that he did not recall such a meeting and had not heard Ms. Shipione's name prior to the summer of 2003. Mr. Girard also stated that he did not recall having an impression that people were concerned about the SDCERS's funding level until he received Mr. Webber's phone call during Labor Day weekend of 2003. However, Mr. Girard remembered that he read about the underfunding issues when the Union-Tribune began covering them. He did not investigate the underfunding at that time because he had heard that other attorneys in the City Attorney's office were looking into the pension issues.

Mr. Romano showed Mr. Girard Exhibit 8, a June 23, 2002 e-mail from Councilman Byron Wear to Ms. Lexin, Mayor Murphy and other Councilmembers, copying Mr. Girard and others, and asked why Mr. Wear had sent him the e-mail. Mr. Girard explained that Mr. Wear believed that Ms. Lexin represented that the SDCERS Board was going to approve MP-2 and it did not. Mr. Girard believes he got the e-mail because he had been at the closed

session where Ms. Lexin made that representation. Mr. Wear, who was "volatile," and "had a temper," wanted to call attention to this by "dressing Ms. Lexin down." Mr. Girard also noted that Mr. Wear's reference to "down the policy path" referred to the entirety of Meet and Confer, including retirement benefits.

Mr. Romano then showed Mr. Girard Exhibit 9, an August 21, 2002 e-mail from Lorraine Chapin to Mr. Girard and read Ms. Chapin's written statement that "This is further support for the proposition that future meet and confer benefits involving retirement not be subject to a contingency such as the Board approving requested funding changes for the System as well as prospective effective dates." Mr. Romano also showed Mr. Girard Exhibit 10, a July 19, 2002 memorandum from Mr. Girard discussing a conversation he had with Ms. Chapin. Mr. Girard confirmed that the subject of that conversation was what Ms. Chapin had written about in her August 21 e-mail. He explained further that he was about to go on a three-week cruise on July 20 when he was contacted the day before and asked for his help with placing on the Council docket a vote for an ordinance to approve the new benefits promised to the employees under MP-2. Because certain benefits, such as the retiree healthcare benefits, were to begin on July 1, this needed to be taken care of a month prior. As a result, there was a "big fire drill" to get this done. Mr. Girard stated that the SDCERS Board should have anticipated a need for the Council to adopt an ordinance. He suggested that the Board advance the expense of the benefits until the ordinance got passed by the Council. Mr. Romano asked if it generally was the case that ordinances enhancing benefits get passed on June 30. Mr. Girard responded that it depended upon when the benefits were scheduled to take effect. Mr. Girard said he had been approached to help with this situation because he could place items on the docket. Mr. Romano pointed out that Ms. Chapin's August 21 e-mail referred to the Board not making the City's contribution relief contingent on the granting of enhanced benefits. Mr. Girard stated that if the e-mail was subject to that interpretation, he did not appreciate it at that time. Mr. Girard did not recall having a conversation about the contingency issue with Ms. Chapin. Mr. Girard explained that he was more concerned about coordination at the SDCERS Board so such a "fire drill" would not occur again.

Mr. Romano next showed Mr. Girard Exhibit 11, Ordinance 19121, adopted on November 18, 2002, which put MP-2 into effect. Mr. Girard did not recall being at the Council meeting during which Ms. Shipione spoke out against MP-2 and MP-2 was voted on. Mr. Romano pointed out that Ms. Shipione had made a pitch that included the words "corrupt" and "illegal." Mr. Girard said he would not have necessarily been at the open session and he would have recalled Ms. Shipione making allegations of illegal conduct at the SDCERS Board. Mr. Romano asked who would have been at that council meeting. Mr. Girard stated that in the fall of 2002, either Mr. Gwinn or Mr. Duvernay would have been in the City Attorney's chair at the open session.

Mr. Romano asked if Mr. Girard recalled a discussion about the SDCER's Board's indemnification. Mr. Girard vaguely recalled that the Board's indemnification came up in closed session. He said he was not aware of any controversy involving the pension at the time, and nothing he heard in 2002 as part of Meet and Confer "set off any alarms" with him in regard to the pension. Mr. Girard noted that because Ms. Stallings' case had just ended, he would like to believe that he was attuned to conflicts of interest and Section 1090 issues at that time. Mr. Romano asked if it was conceivable that Mr. Gwinn was at the Council meeting

during which MP-2 was passed and did not report back to anyone about what happened. Mr. Girard said that it was possible, but that he did not recall Mr. Gwinn saying anything to him about it.

Mr. Romano asked Mr. Girard how, given Ms. Shipione's written and oral allegations, the issues with MP-2 could not come to his attention. Mr. Girard responded that he "cannot do everything." He was very involved in the Ballpark and Chargers projects and "people knew that." It did not surprise Mr. Girard that people in the City Attorney's office felt that they had the pension issues under control, and because he did not supervise those people who had been assigned to cover pension issues, if they did not come to him for help he had no reason to believe that they were not handling it appropriately. He did not recall any Councilmember asking his thoughts on the pension underfunding. Mr. Girard also explained that people were very dismissive of Ms. Shipione. He noted that ever since the stadium expansion, people accused the Council of being corrupt all of the time. He stated, "people get numb to it. I got numb to it." Mr. Romano asked how the fact that Ms. Shipione was an appointed official affected how she was viewed. Mr. Girard stated that he heard that Ms. Shipione's husband was *behind her* allegations because he had been "bent out of shape" about an issue involving the San Diego airports. Mr. Girard met Ms. Shipione once and had no knowledge or opinion about her character.

Corbett

Mr. Romano asked if Mr. Girard had been involved with the *Corbett* litigation. Mr. Girard responded that he was not part of the *Corbett* negotiations, but he knew about the case. The plaintiff was a former investigator for the City Attorney's Office, which resulted in a lot of office talk about the case. Mr. Girard also stated that the City had outside counsel for the *Corbett* case who advised that the City should settle because of a case called *Ventura*. Mr. Girard believed that the *Ventura* case was wrongly decided. Mr. Romano showed Mr. Girard a document entitled "Management's Discussion and Analysis" and pointed out handwritten notes on the third page of the document that read "cut? Should this section be considered for this year – Corbett + 13th check" and asked if the handwriting was his. Mr. Girard said that the handwriting was not his and he did not recognize to whom it belonged.

Presidential Leave

Mr. Romano reminded Mr. Girard that, in a previous interview, he had told V&E that he had been brought into a tax meeting after 2002 regarding Presidential Leave (Lawrence Grissom, Paul Barnett (Deputy SDCERS Administrators), Mr. Morris, and Ms. Chapin were also at the meeting). Mr. Girard did not know why he was asked to attend that meeting. He did remember that tax council advised SDCERS that there could be potential negative tax implications on SDCERS because of the presidential benefit, and SDCERS was going through a voluntary process with the IRS to rectify the problem. SDCERS wanted to "pass the buck" to the City because of the tax consequence by giving the money back to the unions and let the City deal with making the union presidents whole. Mr. Romano showed Mr. Girard Exhibit 12, a September 21, 2004 letter from the Ice Miller law firm to Ms. Chapin and Roxanne Story-Parks, and asked if there was any disclosure issues related to the tax issue. Mr. Girard explained that the tax issue belonged to the SDCERS Board and was not a City tax issue. He did not know how

it was resolved. Mr. Girard thought that the issue was submitted to the IRS. He also said that the City did not pay back the union presidents because they said it was the SDCERS Board's fault for accepting money from the unions, an agreement that the City did not learn about for years after it began.

Legislative Officers Retirement Plan

Mr. Romano asked Mr. Girard if the reduction in retirement age from 62 to 55 was consistent with the Charter. Mr. Girard stated that he was not involved with the Legislative Officers Retirement Plan ("LORP") at all and had no reason to double check the legal work on it or believe that it was illegal. He also said that the vesting in Charter applied to employees, not legislators. He thought there would have been a formal written opinion on LORP issued by the City Attorney's Office, but said that such opinion would not have come from him because LORP had been established a long time ago. However, if LORP was clearly established in the Charter, there would not be a formal opinion. Mr. Romano noted that the Charter clearly expressed a desire to have a ten-year vesting period and a 62 year retirement age and asked Mr. Girard if he would have expected new legal research to be conducted. Mr. Girard stated that if a proposition directed at amending the Charter was defeated, he would not have expected an opinion to be directed at the legislative plan. Also, because a term limit of eight years was adopted for legislators, he did not know if an opinion was expected. Mr. Girard said that if advice was sought regarding LORP, attorneys who dealt with the retirement issues in the City Attorney's office, such as John Kaheny, would have handled it.

Impression of City Managers Jack McGrory and Michael Uberuaga

Mr. Romano asked Mr. Girard's impression of Mr. Uberuaga and Mr. McGrory. Mr. Girard said he thought that Mr. Uberuaga was bright and successful, but that he delegated a lot. He trusted his subordinates, which was both negative and positive. Mr. Uberuaga's staff would complain from time to time that he delegated too much and that they wanted him to provide more guidance. His style of management was completely different than that of Mr. McGrory. Mr. Girard also thought that Mr. McGrory was very bright. He said that Mr. McGrory was much more apt to get involved in a particular matter and handle the details of it than Mr. Uberuaga. Mr. Girard thought that Mr. McGrory needed to act more like a manager than a lawyer at times.

WF&G